

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

B
P/S

75-1039

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

IN THE MATTER OF

MICHAEL F. COIRO, JR.

ATTORNEY FOR THOMAS DE SIMONE,

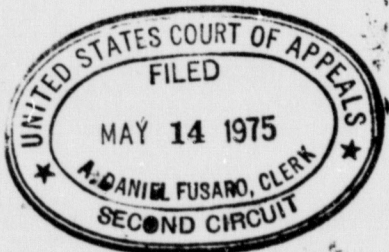
Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLEE'S APPENDIX

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

JEROME M. FEIT,
KENNETH A. HOLLAND,
Attorneys,
Department of Justice,
Washington, D. C. 20530.



PAGINATION AS IN ORIGINAL COPY

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(Whereupon the reporter complied by reading the testimony of both witnesses as required.)

THE COURT: All right, you may step out.

(The Jury left the courtroom.)

(A recess taken at this time.)

(Time noted 7:25.)

THE COURT: Well, gentlemen, I have a note that they have had five poles and they can't agree. And the decision is such that it is apparently seven to five. I don't think there is too much point in giving an Allan charge.

MR. COIRO: No.

THE COURT: If it were just one or two I might do so.

Bring them in. You stay after I discharge them because we have to fix a date for another trial.

(The Jury is in the jurybox.)

THE COURT: I have read the note that you have had five poles and the Jury cannot agree. There is a division of seven to five. Three days have been wasted and a great deal of expense and time has been consumed. But, that's the way the pole reads and the Court must accept it.

I am not going to suggest that you go back and try again because it is seven to five. But I would be

1 also less than frank if I didn't say I was astonished
2 and surprised that a verdict wasn't brought in and
3 brought in rapidly. Nevertheless, I thank you for your
4 efforts.

5 THE CLERK: You are excused for the term. If
6 you need a certificate of attendance would you wait
7 for a minute and I will take the names.

8 THE COURT: Very well, thank you very much.

9 I think you ought to show this note from the
10 Jury.

11 (Jury excused.)

12 THE COURT: Let's figure out a date for trial.

13 MR. MEYERSON: I am ready immediately. Monday.

14 THE COURT: Now we are going to have a long
15 song and dance from Mr. Coiro. He is a specialist in
16 hung juries.

17 MR. COIRO: That one was nobody's fault but the
18 Jury's fault.

19 THE COURT: All right, October 13, 1974 for
20 trial.

21 * * *

22
23
24
25
ONLY COPY AVAILABLE

1 UNITED STATES DISTRICT COURT

Transcript of November 25, 1974

2 EASTERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA :

5 -against- :

6 THOMAS DE SIMONE, :

74 CR 336

7 Defendant :
8 -----x

9
10 United States Courthouse
11 Brooklyn, New York

12 November 25, 1974
13 10:00 o'clock a.m.

14 B e f o r e :

15 HONORABLE JOHN R. BARTELS, Senior U.S.D.J.
16
17
18
19
20

21 ILENE GINSBERG
22 OFFICIAL COURT REPORTER
23
24
25

1 Appearances:

2 DAVID G. TRAGER, ESO.
3 United States Attorney
4 for the Eastern District of New York

5 BY: HAL MEYERSON, ESO.
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1 THE CLERK: Criminal cause for trial, U.S.A.
2 v. Thomas DeSimone.

3 THE COURT: Are you ready for trial,
4 Mr. Meyerson?

5 MR. MEYERSON: Yes, your Honor.

6 THE COURT: Where is your attorney?

7 THE DEFENDANT: I went to his office this
8 morning and the secretary gave me this affidavit
9 (indicating document).

10 THE COURT: Let the record show that last
11 October 3rd after the end of this case -- that is,
12 the first trial of this case, this Court set down
13 this case for a new trial for November 18th.

14 About two or three days later I suppose,
15 maybe the 8th of October, the trial was set down for
16 today, November 25 with the consent of both parties.

17 Now, last Tuesday or Wednesday I think it
18 was -- no, it was Tuesday the 19th, Mr. Michael
19 F. Coiro called up my law clerk and said he would
20 like an adjournment inasmuch as he was trying a
21 case in the State court.

22 The information related to him was clear and
23 positive that under no circumstances would there be
24 an adjournment of this case. He knew this last
25 Tuesday. Nothing further was said.

1 This morning at 10:00 o'clock this case was
2 called for trial.

3 Instead of appearing, Michael F. Coiro, Jr.,
4 delivered to me an affidavit stating that he
5 represented Thomas DeSimone; that this matter is
6 scheduled for trial on Monday the 25th day of November
7 1974, and now I quote the third paragraph:

8 "That I will be unable to appear with my
9 client on that date due to the fact that I'm
10 actually engaged in Queens County Supreme
11 Court before the Honorable Justice Moses
12 Weinstein."

13 He then asks for a later adjournment.

14 Of course, this Court could not run or operate
15 properly if it had to postpone cases at the last
16 minute request of an attorney particularly when that
17 attorney and his client knew over a month ago that
18 the case was scheduled for trial on a specified
19 date such as November 25.

20 For him, despite the order of this Court,
21 to deliberately violate the order of this Court by
22 beginning a case in a State court, particularly
23 upon his not presenting himself after this Court
24 said that it would not grant an adjournment is a
25 flagrant disobeying of this Court's order.

1 You, Mr. DeSimone, have a right to be protected
2 and I am willing to grant an adjournment of one
3 week to give you an opportunity to get another
4 lawyer and that will be until December 2nd.

5 If Mr. Coiro can come in on that date then
6 of course, he will represent you. It would be
7 perfectly proper for him to do so. If not, you
8 must have another lawyer and if not I will revoke
9 your bail. You take that message to Mr. Coiro and
10 also indicate to him that I think he has violated the
11 rules of this Court.

12 Let the record show that the jury is ready to
13 be called up; that the jury fee is twenty dollars a
14 day. We would undoubtedly have at least twelve
15 jurors and one alternate so that would be \$260 a day
16 to say nothing of the wastage of time of this Court
17 and the Assistant United States Attorney's office.

18 You had better make my feelings plain to
19 Mr. Coiro and I would suggest that you go out
20 immediately and get another lawyer to represent you
21 because something is going to happen on December 2nd.

22 THE DEFENDANT: Yes, your Honor, but he was my
23 last lawyer in the last trial.

24 THE COURT: Yes, I know.

25 Have you paid him to represent you in this

1 trial?

2 THE DEFENDANT: Yes.

3 THE COURT: How much?

4 THE DEFENDANT: A thousand dollars so far.

5 THE COURT: What is he asking for?

6 THE DEFENDANT: I don't know. He didn't tell
7 me.

8 THE COURT: You know, he is going to charge you
9 more?

10 THE DEFENDANT: Yes, I know.

11 THE COURT: Well, you will get that thousand
12 dollars back. I guarantee you will get it back. Get
13 yourself another lawyer.

14 I can't do anything more. You have a right
15 to be represented but I am not waiting around at the
16 beck and call of Mr. Coiro and you can tell him that
17 I will take this up with the Board of Judges of this
18 Court.

19 I can't say anything more, Mr. DeSimone.

20 MR. MEYERSON: I'd like to put on the record
21 that I never received a phone call whatsoever telling
22 me there was any trouble but relying on the statement
23 of your law clerk that the adjournment was requested
24 and denied, that ten witnesses were subpoenaed, all
25 who get vouchers for over twenty dollars with some

1 coming in from other states involving a lot of money
2 and mileage and it has cost the Government conserva-
3 tively, a couple of hundred dollars.

4 THE COURT: I would think more than that.

5 We will see who much it costs and we will see
6 what Mr. Coiro, Jr. has to do with this.

7 THE DEFENDANT: I was talking to him this
8 morning. He called my house and told me to come and
9 pick up the affidavit.

10 I told him "Mike, this Judge might revoke my
11 bail."

12 THE COURT: Well, there are plenty of lawyers
13 around here. I will see that you get the thousand
14 dollars back.

15 I can't say anything more to you. It's not
16 your fault.

17 Next Monday.

18 MR. MEYERSON: Thank you, your Honor.

19 THE COURT: What else do you have to say?

20 MR. MEYERSON: Nothing else.

21 THE COURT: You are ready for trial?

22 MR. MEYERSON: Yes.

23 THE COURT: How many witnesses do you have
24 here?

25 MR. MEYERSON: Between five and ten.

THE COURT: All right.

Appellant's Affirmation of November 22, 1974

UNITED STATES COURT - EASTERN DISTRICT

UNITED STATES OF AMERICA

-against-

THOMAS DE SIMONE,

Defendant.

AFFIRMATION

U.S. DISTRICT COURT
DEC 2 1974

MICHAEL F. COIRO, JR., an attorney at law being duly admitted to practice in the United States Court for the Eastern District of New York hereby affirms under the penalties of perjury as follows:

1. THAT I represent THOMAS DE SIMONE in the above captioned matter.
2. THAT this matter is scheduled in the Eastern District Court before the Hon. John R. Bartels, on Monday, the 25th day of November, 1974.
3. THAT I will be unable to appear with my client on that date due to the fact that I am actually engaged in the Supreme Court of the State of New York, County of Queens, before the Hon. Moses Weinstein at Part 10 in the matter of the People of the State of New York v. John Cerverizzo, et al.

WHEREFORE, for the above mentioned reason it is most respectfully requested that this matter be adjourned to a later date.

DATED: Kew Gardens, New York
November 22, 1974

Michael F. Coiro, Jr.
MICHAEL F. COIRO, JR.

ONLY COPY AVAILABLE

Sworn to before me,
this day of

19

Affirmation of November 29, 1974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

THOMAS DE SIMONE,

Defendant.

7442336

AFFIRMATION
IN
U.S. DISTRICT COURT E.D. NY
DEC 2 1974

TIME AM
PM

MICHAEL F. COIRO, JR., an attorney at law being duly admitted to practice in the United States District Court for the Eastern District of New York hereby affirms under the penalties of perjury as follows:

1. THAT I represent THOMAS DE SIMONE in the above captioned matter.

2. THAT this matter is scheduled for Monday, the 2nd day of December, 1974, in the United States District Court for the Eastern District of New York before the Hon. John R. Bartels.

3. THAT I will be unable to appear with my client on that date due to the fact that I am actually engaged in the Supreme Court of the State of New York, County of Queens, Part 10, before Judge Moses Weinstein in the matter of the People of the State of New York v. John Cerverizzo, et al.

WHEREFORE, for the above mentioned reason it is most respectfully requested that this matter be adjourned to a later date.

DATED: Kew Gardens, N. Y.
November 29, 1974

MICHAEL F. COIRO, JR.

Disposition of Jurors for November 25, 1974,
and December 2, 1974

UNITED STATES DISTRICT COURT

LEWIS ORGEL
CLERK

OFFICE OF THE CLERK
EASTERN DISTRICT OF NEW YORK
U. S. COURT HOUSE
BROOKLYN, NEW YORK 11201

April 28, 1975

Dear Mr. Holland,

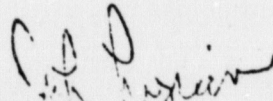
Pursuant to your request, I have consulted our records and found the following information concerning juror utilization on the two days in question.

The records show that Judge Bartels requested a jury panel for a criminal case to begin on Monday, November 25, 1974. Sixty-six jurors were summoned to attend Court on that date, and were available in the Central Jury Room. Although 35 jurors would have been sent to Judge Bartels' courtroom if he had selected a jury that day, the attendance at Court of only 22 of these can be attributed directly to Judge Bartels' request for a jury panel, because two other judges requested panels for the same day. On November 25th, only one of the three judges actually picked a jury. Thirty jurors were sent to Ch. Judge Mishler's courtroom for jury selection in a civil case. The other 36 jurors were not used that day.

Judge Bartels again requested a jury panel for a criminal case beginning on Monday, December 2, 1974. That was a Return Day - the day on which summonses for a new panel of jurors were returnable. One hundred and seventy-eight jurors began a two week term of jury service that Monday. All members of a new jury panel must attend Court on the Return Day for the purposes of orientation and up-dating of records. Judge Bartels' statement of intention to select a jury on December 2, 1974 did not affect the number of jurors who began their service that day. Thus, no additional jurors attended Court because of Judge Bartels' request for a jury panel.

I trust that the information provided here is sufficient, and will be happy to be of further service if I can.

Sincerely,


John Lupiano,
Commissioner of Jurors

(EXTRACT FROM THE MINUTES)
(General Form)At a Criminal Term of the Supreme
Court, held in and for Queens County at the Court House,on the 25 day
of April 1975

PRESENT:

Honorable Moses Weinstein

Justice of the Supreme Court.

Indictment No. 965-74

THE PEOPLE OF THE STATE OF NEW YORK

vs.

John Cerverizzo

Indictment 965-74 handed up in court on April 30, 1974.
Defendant arraigned on indictment on May 1, 1974.

Matter appeared on trial calendar of Part 10 of this court on Oct. 7 & 24, 1974 & adjourned. Defendant's Attorney not present in court on these days. On Nov. 4, 1974 matter was again adjourned. Defendant's attorney, Michael Coiro, was present in court on that day.

On Nov. 18, 1974 trial began & continued through following dates; Nov. 19, 20, 21, 25, 26, 27, 29 & Dec. 2, 3, 4, 5, 6, 1974.

Defendant & his attorney present at above dates.

A TRUE EXTRACT FROM THE MINUTES.

J. J. Cerverizzo
Clerk.

No. 364236

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO <i>Michael Coiro Esq.</i>		POSTMARK OR DATE
STREET AND NO. <i>118-21 Queens Boulevard</i>		
P.O. STATE AND ZIP CODE <i>Queens, N.Y. 11375</i>		
OPTIONAL SERVICES FOR ADDITIONAL FEES		
RETURN RECEIPT SERVICES	1. Shows to whom and date delivered 15¢ With delivery to addressee only 65¢	
	2. Shows to whom, date and where delivered 35¢ With delivery to addressee only 85¢	
DELIVER TO ADDRESSEE ONLY	50¢	
SPECIAL DELIVERY (extra fee required)		
PS Form 3800 Apr. 1971	NO INSURANCE COVERAGE PROVIDED— NOT FOR INTERNATIONAL MAIL (See other side) GPO : 1972 O - 460-743	

Letter of Special
Prosecutor Meyerson to
Appellant after his first
failure to appear on Nov-
ember 25, 1974.

Organized Crime and
Racketeering Section
Criminal Division
The Federal Building
35 Tillary Street
Room 327-A
Brooklyn, New York 11201
November 26, 1974

Michael Coiro, Esquire
118-21 Queens Boulevard
Queens, New York 11375

Re: United States v. Thomas DeSimone

Dear Mr. Coiro:

Pursuant to agreement between the Court, you, and I on November 3, 1974, the above case was called for trial on Monday morning, November 25, 1974. The Government received no notice for any request for adjournment from your office.

At least 6-7 witnesses were subpoenaed from this district as well as other states, at a cost to the Government of several hundred dollars. The Court, the Clerk of the Court, the court reporter, as well as the Government were ready to proceed with the trial.

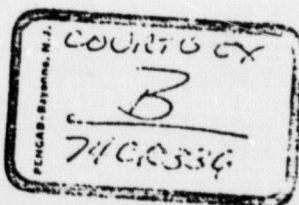
At that time, the Court indicated that sanctions would be imposed for your failure to be present. Nevertheless, it allowed your client an adjournment of one week to Monday, December 2, 1974, at 10:00 a.m. The Court made it clear to your client that if you were still unavailable he should get another lawyer; but, in any case, the trial will commence on December 2, 1974 at 10:00 a.m.

I will expect your client to be ready for trial on December 2, 1974. If you cannot attend or if there will be any requests for adjournment, please have the courtesy of notifying me.

Sincerely yours,

Harold Meyerson
Special Attorney

GTM:EM:lab

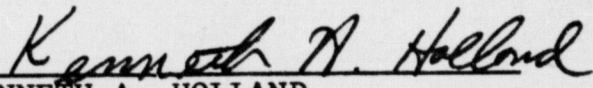


[Handwritten signature]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Appellee's
Appendix and the foregoing Motion for Leave to File Appellee's
Appendix have been mailed this day to:

Gerald L. Shargel, Esquire
La Rossa, Shargel & Fischetti
522 Fifth Avenue
New York, New York 10036


KENNETH A. HOLLAND
Attorney
Appellate Section
Criminal Division
Department of Justice
Washington, D. C.
(Tel. 202-739-5029)

Dated: this 9th day of May 1975